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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,253	04/22/2004	Christophe Walravens	10458-20US SC/sm	7273

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EXAMINER

BOES, TERENCE

ART UNIT	PAPER NUMBER
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3682

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/829,253

Applicant(s)

WALRAVENS ET AL.

Examiner

Terence Boes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-3 and 5-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3, and 5-16 are rejected under 35 U.S.C. 102(B) as being anticipated by Desrochers et al. (CA 2,297,220).

Desrochers et al disclose:

Regarding claim 1,

- An auxiliary operating device for manually operating a normally motor-operated closure between open and closed positions (see fig 3)
- a shaft (12)
- a driving member (11) mounted to said shaft and axially displaceable in translation therewith between an idle position and an operational position (gear is axially displaceable in that it is capable of being axially displaced, Furthermore, while features of an apparatus may be recited either structurally or functionally, claims directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. Therefore, claim 1 is rejected since all claim limitations have been met as disclosed above (see MPEP 2114)).
- wherein the driving member is operatively coupled to the closure

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- a manual actuator (14) fixedly mounted to the shaft in direct rotational driving engagement therewith (see figure 6, Page 9/lines 1-12) for first displacing said driving member from said idle position to said operational position and then driving said driving member in order to displace the closure, (Furthermore, while features of an apparatus may be recited either structurally or functionally, claims directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. Therefore, claim 1 is rejected since all claim limitations have been met as disclosed above (see MPEP 2114)))
- wherein said manual actuator is selectively fixedly mountable at either end portions of said shaft irrespective of the position of said driving member on said shaft.
 - the recitation “selectively fixedly mountable” merely implies the possibility or capability of being mounted at either end. What structure allows for the manual actuator to be “selectively mountable” at either end portion of said shaft?)

Regarding claim 2,

- wherein said manual actuator is structurally isolated from said driving member (see figures 2-5)
- said manual actuator acts on said driving member via said shaft.

Regarding claim 3,

- wherein said shaft is mounted to a support (13, see figures 2-5)

- wherein said shaft is axially displaceable relative to said support.
 - The term “displaceable” implies merely the possibility of being displaced. The shaft is capable of being axially displaced, for example on disassembly of the device. What structure allows the shaft to be axially displaceable?

Regarding claim 5,

- wherein said manual actuator includes a pulley (20) fixed to said shaft (see figure 6).

Regarding claim 6,

- wherein a biasing member (52) acts on said shaft to urge said driving member to said idle position thereof.

Regarding claim 7,

- wherein said biasing member includes a spring (52) mounted about the shaft between the support and a collar (56) fixed on the shaft.

Regarding claim 8,

- a cam engaging member (34) is mounted for rotation with the shaft
- said cam engaging member being movable along a cam surface (46) for moving said driving member between said idle position and said operational position (see figures 3, 4, 5).

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Regarding claim 9,

- wherein said cam is mounted to said shaft, and wherein a clutch (202, 204, Pg 12/C25-35) acts on said cam to temporarily retain said cam against rotation to allow said manual actuator to axially displace said driving member from said idle position to said operational position
- the cam being fixed to the shaft (see figure 6, the cam surrounds the shaft and is therefore fixed to the shaft).

Regarding claim 10,

- wherein said clutch includes a spring blade (202) extending about the cam to exert a radial friction thereon (Pg 12/C25-35).

Regarding claim 11,

- wherein said driving member includes a gear (11) fixedly mounted to said shaft for rotational and axial movement therewith.

Regarding claim 12

- wherein said cam engaging member is mounted to said gear (cam engaging member is mounted to said gear via shaft 12)

Regarding claim 13

- An auxiliary operating device as defined in claim 1, wherein the shaft is mounted to a support (13) for rotational and axial movement with respect thereto, and wherein said shaft carries a cam (38) and a cam engaging member (34).

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- a first one of said cam and said cam engaging member being mounted for rotation with said shaft through operation of said manual actuator (see figures 3, 4, 5)
- wherein a clutch (202, 204) is provided for temporarily retaining a second one of said cam and said cam engaging member against rotation to first cause an angular movement between the cam and the cam engaging member followed by a joint rotation thereof with the shaft (Pg 12/C25-35).

Regarding claim 14, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function (see MPEP 2114). The device of Derochers is capable of functioning as claimed.

Re claim 15,

- An auxiliary operating device for manually operating a normally motor-operated closure between open and closed positions
- a support (13)
- a shaft (12) mounted to said support for axial and rotational movement
- a driving member (11) mounted to said shaft for joint movement therewith
- said driving member being movable between an idle position and an operational position
- wherein the driving member is operatively coupled to the closure

- a manual actuator (14) connected in direct driving relationship with the shaft for driving said shaft in rotation (see figure 6, Page 9/lines 1-12, Furthermore, while features of an apparatus may be recited either structurally or functionally, claims directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. Therefore, claim 15 is rejected since all claim limitations have been met as disclosed above (see MPEP 2114))
- a cam (38) cooperating with a cam engaging member (34) for axially displacing said shaft with said driving member as a result of a rotation imparted to said shaft by said manual actuator
 - The recitation “for axially displacing said shaft with said driving member as a result of a rotation imparted to said shaft by said manual actuator” is drawn to an intended use. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus.” Therefore, claim 15 is rejected since all claim limitations have been met as disclosed above (see MPEP 2114).

- a clutch (202, 204) for temporarily drivingly disconnecting said shaft from one of said cam and said cam engaging member while allowing both said cam and said cam engaging member to rotate with the shaft once said driving member assumes said operational position thereof (Pg 12/C25-35).

Regarding claim 16

- wherein said cam and said cam engaging member are mounted to said shaft independently of said manual actuator (see figure 4, because manual actuator rotates relative to cam, and cam engaging member rotates relative to manual actuator, they are considered to be mounted on said shaft independently).

Response to Arguments

1. Applicant's arguments filed 12/20/2006 have been fully considered but they are not persuasive.

A. Applicant argues "The pulley 20 is not fixed on the shaft 12 and, thus, not connected in direct driving engagement therewith".

In response, the pulley is clearly fixed on the shaft 12 as can be seen in figure 6. Because the pulley fully surrounds the shaft the pulley is fixed on the shaft 12. Furthermore, the pulley is in direct driving engagement with shaft 12 as clearly stated on page 9/lines 1-12. On page 9/lines 1-12 Desrochers et al. state "Accordingly, further rotation of the pulley 20 by way of the manual operation of the chain 18 will cause the intermediate shaft 12 to rotate jointly with the cam member 38 and the pulley 20, thereby allowing the garage door D to be manually operated".

- B. Applicant argues "...the pulley cannot be mounted at either end portions of the shaft 12 irrespective of the cam member 16 carrying the driving pin 60".

In response, the pulley is capable of being mounted on either end portion of the shaft 12 irrespective of the cam member 16 carrying the driving pin 60. "Mountable" implies only the mere possibility of being mounted. The claim does not structurally recite how or by what means the pulley is "mountable". The pulley is "mountable".

- C. Applicant appears to argue [Desrochers et al. does not disclose where in said shaft is axially displaceable].

In response, the shaft is capable of being axially displaced.

"Displaceable" implies merely the possibility of being displaced. The shaft is "axially displaceable".

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terence Boes whose telephone number is (571) 272-4898. The examiner can normally be reached on Monday - Friday 9:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TB

TB

3/9/07


RICHARD RIDLEY
SUPERVISORY PATENT EXAMINER